

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PHILIP SMITH,

Plaintiff,

v.

COUPANG INC.,

Defendant.

CASE NO. 2:23-cv-01887-RAJ

**ORDER**

**I. INTRODUCTION**

THIS MATTER comes before the Court on Plaintiff's Motion for Leave to File a Second Amended Complaint ("SAC")<sup>1</sup> pursuant to Federal Rule of Civil Procedure 15. Dkt. # 35. Defendant opposes Plaintiff's Motion. Dkt. # 42. For the reasons set forth below, the Court **GRANTS** Plaintiff's Motion. Dkt. # 35.

<sup>1</sup> Plaintiff's briefing refers to the proposed amended complaint as the "Corrected Amended Complaint," but the Court will refer to it as the "Second Amended Complaint" or "SAC."

## II. BACKGROUND

Plaintiff filed the Complaint in this matter on December 8, 2023, alleging Defendant Coupang was not in compliance with multiple United States laws, rules, and regulations, including the Sarbanes-Oxley Act of 2002 (“SOX”). *See generally* Dkt. # 1. On February 6, 2024, Defendants moved to dismiss the Complaint for failure to state a claim. Dkt. # 22. Then, on February 26, 2024, Plaintiff filed the First Amended Complaint (“FAC”) as a matter of course pursuant to Federal Rule of Civil Procedure 15(1)(B). Dkt. # 26. On March 11, 2024, Defendant filed a Motion to Dismiss the FAC. Dkt. # 30. Shortly thereafter, Plaintiff sought Defendant’s consent to file a corrected complaint, which was refused. *See* Dkt. # 35 at 3. On April 4, 2024, Plaintiff filed the instant motion. Dkt. # 35.

## III. LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 15(a)(2), courts should “freely give leave” to amend a pleading “when justice so requires.” Fed. R. Civ. P. 15(a)(2). “[T]his policy is to be applied with extreme liberality.” *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987)).

Courts use five factors to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the party has previously amended its pleading. *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (citing *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989)); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962) (holding that leave to amend should be “freely given”). “A proposed amendment is futile ‘if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense.’” *Ralls v. Facebook*, 221 F.Supp.3d

1 1237, 1245 (W.D. Wash. 2016) (quoting *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214  
 2 (9th Cir. 1988)). The factors do not carry equal weight, as “it is the consideration of  
 3 prejudice to the opposing party that carries the greatest weight.” *Eminence Capital, LLC*  
 4 *v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *DCD Programs*, 833 F.2d at  
 5 185). “The party opposing amendment bears the burden of showing prejudice.” *DCD*  
 6 *Programs*, 833 F.2d at 187 (citing *Beeck v. Aquaslide ‘N’ Dive Corp.*, 562 F.2d 537, 540  
 7 (8th Cir. 1977)).

#### 8 IV. DISCUSSION

9 Plaintiff asks the Court for leave to file a SAC to correct the name of Defendant  
 10 from “Coupang Global LLC” to “Coupang LLC” in six instances throughout the  
 11 pleading. *See* Dkt. # 35 at 3. Plaintiff explains the naming of the incorrect corporate  
 12 entity throughout these six paragraphs of the FAC was an inadvertent typographical error,  
 13 not an intentional substantive change. *See id.*

14 First, Defendant argues that amendment would be futile. *See* Dkt. # 42 at 11.  
 15 Defendant contends that if Plaintiff changes the name of the corporate entity in the  
 16 amended complaint, then will be no basis for the application of US or state law. *See id.*  
 17 at 8-11. Defendant argues that the extraterritorial application of the law would warrant  
 18 dismissal. *See id.*

19 The Court disagrees that amendment would be futile. Although SOX’s anti-  
 20 retaliation provisions do not apply extraterritorially, the statute may still apply when there  
 21 is a “mix of domestic and foreign conduct.” *Daramola v. Oracle Am., Inc.*, 92 F.4th 833,  
 22 839-40 (9th Cir. 2024). Whether there is sufficient domestic conduct to support the  
 23 territorial application SOX does not necessarily turn on a single fact, including, where a  
 24 corporation is registered, the company’s predecessor history, or where the whistleblower  
 25 lived or worked. *See e.g., Prout v. Vladeck*, 316 F. Supp. 3d 784, 804 (S.D.N.Y. 2018)  
 26

1 (finding sufficient domestic conduct to warrant the application of SOX where plaintiff  
2 was a US citizen, working at a Japanese subsidiary of an American company, and was  
3 terminated in the United States—even though plaintiff was employed overseas and  
4 plaintiff’s alleged protected activity and company’s retaliation took place outside of the  
5 United States); *O’Mahony v. Accenture Ltd.*, 537 F. Supp. 2d 506, 510 (S.D.N.Y. 2008)  
6 (finding the territorial application of SOX appropriate where an Irish citizen was  
7 employed in France and alleged the Global Business Director of Operations located in  
8 New York retaliated against her). Therefore, the Court is not persuaded that the proposed  
9 changes would be futile and automatically require the Court to dismiss the matter if  
10 Plaintiff makes the proposed amendments.

11 Defendant also argues that amendment would be “inefficient, costly, and further  
12 delay justice” and suggests Plaintiff acted in bad faith. *Id.* Defendant maintains the  
13 changing of the entity name was raised during meet and confers prior to the filing of the  
14 motion to dismiss and should have been addressed earlier. *See id.* at 7 (citing Cobb Decl.  
15 ¶¶ 3-4). However, Plaintiff’s counsel disputes the defense’s characterization of that  
16 conversation at the meeting. *See* Dkt. # 47 (citing Lenning Decl.).

17 The Court finds that Defendant has not demonstrated that Plaintiff seeks leave to  
18 amend the complaint in bad faith; nor does Defendant meet the burden of showing that  
19 amendment will be prejudicial. *See generally* Dkt. # 42. As Defendant cannot  
20 demonstrate prejudice, the factor that carries the most weight, the Court will permit  
21 Plaintiff to make the proposed changes and file an amended complaint.  
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**V. CONCLUSION**

For the reasons stated above, the Court **GRANTS** Plaintiff's Motion for Leave to File an Amended Complaint. Dkt. # 35. The Court **DENIES** as moot Defendant Coupang's Motion to Dismiss. Dkt. # 30. Plaintiff may file a Second Amended Complaint within 7 days of this decision. Furthermore, Defendant may file a motion to dismiss within 30 days of this decision.

Dated this 11th day of July, 2024.

A handwritten signature in black ink, reading "Richard A. Jones", written over a horizontal line.

The Honorable Richard A. Jones  
United States District Judge